



OLR RESEARCH REPORT

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DRUG TESTING OF PUBLIC ASSISTANCE RECIPIENTS

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You asked if any of our neighboring states require people applying for or receiving public assistance to be tested for illegal drugs.

SUMMARY

According to the National Conference of Legislatures (NCSL), none of our neighboring states requires people applying for or receiving public assistance (typically Temporary Assistance for Needy Families (TANF)) to undergo mandatory testing for illicit drug use as a condition of receiving assistance. To date, seven states have enacted such laws. These are Arizona (2011), Florida (2011), Georgia (2012), Missouri (2011), Oklahoma (2012), Tennessee (2012), and Utah (2012).

The Florida law's suspicionless drug testing was challenged as an unreasonable search from which, the plaintiffs argued, the Fourth Amendment of the U.S. Constitution offers protections, and on February 25, 2013, a U.S. Appeals Court agreed with the lower court in striking the law down (*Lebron v. Secretary, Florida Department of Children and Families*, C.A. 11, Docket No. 6:11-cv-01473-MSS-DAB (2013)). NCSL is not aware of any other legal challenges to these laws, but Georgia's governor delayed implementing his state's law pending the court decision on Florida's law.

In the current legislative season, numerous state legislatures, including Connecticut, New Hampshire, New Jersey, and New York are considering bills that would institute such a requirement.

STATES WITH MANDATORY DRUG TESTING LAWS

Table 1 lists the seven states that require public assistance applicants or recipients to be screened or tested for illegal drugs and indicates if any have faced legal challenges.

Table 1: States with Mandatory Drug Testing of Public Assistance Applicants and Recipients

State	Law	Legal Challenge	Year Passed
Arizona	Passed a temporary law (FY 12 only) requiring screening and testing of applicants believed to be engaging in illegal substance abuse	No	2011
Florida	Requires all applicants for TANF benefit to be tested	Yes, U.S. Appeals Court found law unconstitutional	2011
Georgia	Requires testing of all TANF applicants—those testing positive ineligible for benefits for one month and until they test negative	No, but governor delayed implementation pending decision on Florida law	2012
Missouri	Requires drug test for all TANF applicants and recipients for whom there is reasonable cause to believe they are using drugs; those found using lose benefits for three years unless they enroll in substance abuse treatment, in which case they can re-apply after six months	No	2011
Oklahoma	Requires screening of all adult TANF applicants; if positive test, benefit denied	No	2012
Tennessee	Requires a plan to implement suspicion-based screening of TANF applicants; report due to General Assembly by January 1, 2014	No	2012
Utah	Requires individuals applying for cash assistance to complete questionnaire screening for illegal drug use. If there is reason to believe an applicant has a substance abuse disorder, the applicant must pass a drug test. If the test is positive, he or she must complete treatment and remain drug-free in order to receive assistance. Benefits are terminated for individuals refusing to be tested.	No	2012

Source: NCSL (2013)

BILLS PROPOSED IN CONNECTICUT AND NEARBY STATES

The Connecticut 2013 General Assembly has two, nearly identical, drug testing bills (pHB [5070](#) and pHB [5221](#)) before it. Each would require anyone receiving “state cash assistance” to be tested for illegal drugs. A first positive test would require the recipient to be screened for drug dependence by a health care provider; a second would require him or her to attend drug treatment; and a third, or failure to attend drug treatment, would result in a permanent bar on assistance.

According to NCSL, the New Hampshire, New Jersey, and New York legislatures are considering bills in their 2013 sessions that would require drug testing of TANF applicants or recipients.

New Hampshire’s bill (HB 121) requires the state’s health and human services agency to institute a drug testing program for all TANF applicants and recipients. The applicants and recipients must pay for the tests. If test results are positive for controlled substances, the individual is ineligible for TANF assistance for one year or until he or she tests negative in a retest.

New Jersey is considering A 891, which subjects adult beneficiaries of the state’s TANF-funded welfare-to-work program to random drug testing. The beneficiary’s benefits are not dependent on the test results, but, based on them, the human services commissioner can condition continued benefit eligibility on the beneficiary’s participation in a drug treatment program.

Several New York legislators introduced A 1998, which requires state social services officials, when determining that someone qualifies for any form or category of public assistance and before issuing such assistance, to require that person to submit to a drug test. The bill directs the commissioner of health to establish rules and regulations regarding (1) the substance to be tested for, (2) the testing methods and frequency, and (3) what constitutes a test failure. A person who fails the test must enroll in a drug treatment program. No assistance would be provided to someone who fails to enroll and actively participate in the treatment program.

OTHER RESOURCES

OLR Reports: [2009-R-0337](#), *Electronic Benefits Transfer, Use of Welfare Funds, and Drug Testing of Welfare Recipients*; [2011-R-0206](#), *Public Assistance Recipients, Drug Testing, and Redeterminations*

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